IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 494 OF 1999

1. Raju @ Malang Ramanna Kasareddy

2. Sanjay @ Salim Ramanna Kasareddy

both aged about 25 and 35 years
respectively, both residing at Room
no.35, Siddhivinayak Society,
Mahatma Phule Nagar, Tilak Nagar,
Chembur, Mumbai 400 089.
Both at present in Jail,
Arthur Road, Central Prison. Appellants
(Original Accused
Nos. 1 and 5.)

vs.

The State of Maharashtra,
(At the instance of Tilak Nagar
Police Station, Mumbai.). Respondents

ALONG WITH
CRIMINAL APPEAL NO. 440 OF 1999

Savita @ Farida Begam Ramanna
Kasareddy, aged about 60 yrs.,
residing at Room No.35, Siddhvinayak
Society, Mahatma Phule Nagar, Tilak
Nagar, Chembur, Mumbai 400 089.
At present in Yeravada Central Prison. Appellant
(Original Accused
No. 2)

vs.

The State of Maharashtra
(At the instance of Tilak
Nagar Police Station, Mumbai). Respondent

Ms. Usha Purohit for the appellants.

Ms. V.R. Bhonsale, APP for the State.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 11th January 2005

ORAL JUDGMENT (Per R.M. Lodha,J.):

Five accused persons were put to trial in the Court of Sessions for Greater Mumbai (the Additional Sessions Judge) for the offences punishable under Sections 144 to 148 and Section 302 read with 149 IPC and in the alternative under Section 302 read with Section 34 IPC. The Additional Sessions Judge vide his judgment 23rd/26th July 1999 acquitted two accused persons of all the charges. The three accused persons were convicted of the offence punishable under Section 302 read with 34 IPC though they were acquitted of the offence punishable under Section 302 read with 149 and sections 144 to 148 IPC. In respect of their conviction under Section 302 read with 34 IPC, they have been sentenced to suffer imprisonment for life. Aggrieved thereby two separate criminal Appeals have been filed. Criminal Appeal No.440/1999 is at the instance of the accused Savita @ Faridabegum Ramanna Kasareddy while Criminal Appeal No.494/1999 is by Raju @ Malang Ramanna Kasareddy and Sanjay @ Salim Ramanna Kasareddy. Both the appeals were heard together and are being disposed of by this common judgment.

2. The prosecution case unfolded during the trial may be summarised briefly thus:

On 21.03.1996 at about 9.30 p.m. Kalavati (PW 6) had gone to the public latrine situate near her house at the end of Siddhi Vinayak society to answer call of nature. Ajay @ Rafiq is said to have teased her. She came back to her house and informed the incident to her brother Shankar (the deceased) - as her other brother Gopal (PW 5) at that time was taking his meals. On hearing the incident from Kalavati, Shankar went to the house of Ajay @ Rafiq which was about 8-9 houses (rooms) away from their house. After few minutes Gopal and his family members heard the shouts and commotion. Gopal came out of the house and rushed towards the place from where the shouts were emanating. Kalavati and Gopal's wife Savitri (PW 10) also came out of their house. They noticed the accused Savitri (A2) having caught hold of Shankar from the front side and her sons Raju @ Malang (A1) and Sanjay @ Salim (A5) assaulting Shankar with weapons held by them. Seeing Gopal rushing towards his brother Shankar, these three accused persons freed Shankar and ran away towards Kurla Terminus. Shankar was lying in pool of blood. Gopal (PW 5) immediately went to Tilak Nagar Police Station and lodged the complaint. After Gopal left the place of incident, two other accused persons Rajesh (A3) and Anand (A4) came there and again

assaulted Shankar with their weapons and ran towards Kurla Terminus. On the basis of complaint made by Gopal, First Information Report (FIR) for an offence under Section 302 read with section 34 I.P.C. was registered. Bhanudas Shankar Kulkarni, PSI (PW 9), attached to the Tilak Nagar Police Station reached the spot where Shankar was lying in pool of blood. Shankar was removed to Rajawadi hospital where he was declared dead. The inquest of dead body of Shankar was done and the inquest panchanama was prepared. PW 9 also removed the blood stained clothes from the dead body. The dead body was sent for autopsy. Dr. Balkrishna P. Hankare (PW 3) conducted the post mortem. About 51 injuries were found on the person of the deceased. PW 9 prepared spot panchanama (Exh. 37). PW 9 then handed over the investigation to Devidas G. Sonawane (PW 13). PW 13 arrested Raju @ Malang (A1) at about 3.30 a.m. on 22.03.1996 at Vidyavihar Railway Station. He was brought to Tilak Nagar Police Station and his arrest panchanama was prepared on 22.03.1996 at about 4.10 hours. The accused Savita @ Farida (A2) was arrested at Kurla Railway Station on 22.03.1996 and was brought to Tilak Nagar Police Station at 5.15 hours. Her arrest panchanama was also prepared at about 5.15 a.m. on 22.03.1996. Sanjay @ Salim (A5) was arrested in the month of June 1996. The other two accused persons (A3 and A4) were also arrested. During the course of

investigation the accused persons were found to have committed offences punishable under Sections 144 to 148 IPC as well as Section 302 read with 34 IPC All the five accused persons were committed to the Court of Sessions for trial.

3. The charge came to be framed on 5th July 1999 against all the five accused persons for the offences punishable under Sections 302 read with 149 IPC and Sections 144 to 148 IPC and in the alternative under Section 302 read with 34 IPC.

4. All the five accused persons pleaded not guilty and were put to trial.

5. The prosecution in support of their case examined 13 witnesses in all. Vinod S. Petekar (PW 1), Gopal P. Yadav (PW 5), Kalavati P. Yadav (PW 6) and Savitri G. Yadav (PW 10) were examined as eye-witnesses. Prakash S. Pawar (PW 2), Sureshkumar R. Maurya (PW 7) Jairangi D. Gupta (PW 8), Mahadev R. Avhad (PW 11) and Sunil R. Kavalekar (PW 12) were also examined as prosecution witnesses in addition to the aforereferred eye witnesses and the investigating officers Bhanudas Shankar Kulkarni (PW9), Devidas G. Sonawane (PW 13) and medical officer Dr.B.P. Hankare (PW 3). The learned Additional Sessions Judge, on conclusion of trial and after hearing the

parties, held that the prosecution failed in proving the charge under Sections 144 to 148 and Section 302 read with section 149 against accused persons but he held that the accused persons A1, A2 and A5 were guilty of the offence punishable under Section 302 read with Section 34 IPC. While holding accused persons A1, A2 and A5 guilty of the offence punishable under Section 302 read with Section 34 IPC, the learned Additional Sessions Judge principally relied upon the testimony of Savitri (PW 10). The deposition of Vinod S. Petekar (PW 1) and Gopal P. Yadav (PW 5) was rejected in toto. The evidence of Kalavati (PW 6), was not held reliable by the learned Additional Sessions Judge but despite that he accepted her evidence to the extent it corroborated the testimony of PW 10 that Shankar (the deceased) was assaulted by the accused persons A1, A2 and A5.

6. We heard the learned counsel for the accused-appellants and the learned APP at quite some length. We also perused the judgment of the learned Additional Sessions Judge and the available evidence.

7. The evidence on record amply establishes that death of Shankar was homicidal. This aspect is not challenged by the appellants. The question that arises for our consideration is whether the prosecution has been able to bring home the guilt of A1, A2 and A5 for the offence

punishable under Section 302 read with 34 I.P.C. beyond reasonable doubt.

8. Gopal (PW 5) is the brother of the deceased. He is first informant. He has not supported the case of the prosecution. Rather he was declared hostile and his evidence is of no help to the prosecution at all. So is the case in respect of the evidence of Vinod S. Petekar (PW 1). He feigned his ignorance about the incident. He stated that the incident did not occur in his presence.
He too was declared hostile by the prosecution.

9. We shall now turn to the evidence of Kalavati (PW 6). In her deposition she stated that on 21.03.1996 at about 9.30 p.m. she went to answer the call of nature outside her house. At that time Ajay @ Rafique teased her. She went back to the house and reported the matter to her brother Shankar (the deceased) as his elder brother Gopal (PW 5) was taking his meals. Shankar immediately left for the house of Ajay @ Rafique situate nearby. After some time, on hearing shouts and commotion, she came out of house and noticed that Savita (A2) held her brother Shankar from front side and her sons Raju @ Malang (A1), Sanjay @ Salim (A5) and Ajay @ Rafiq were assaulting her brother Shankar from back side. She deposed that these accused persons were armed with knife, wooden stick, hockey stick, wooden piece and cricket bat. Curiously in

the same deposition she stated that she had not seen the injuries sustained by her brother Shankar as she was in her house throughout incident. She admitted that in between the place of offence and her house, there were about 8-10 houses. She could not state who was holding which weapon like hockey stick, bat and knife. In her cross-examination she admitted that on hearing commotion at first her brother Gopal (PW 5) went out of house. She also admitted that after some time Gopal (PW 5) came back to house and asked her to stay in house and left for Police Station; at that time, she and her sister in law Savitri (PW 10) were in house. She also admitted that except front portion of road rest of galli is not visible from inside the house. Her testimony creates serious doubt about she having witnessed the incident. She was inside the house when the incident occurred and from inside the house, the place of occurrence is not visible. She is not eye-witness. We find ourselves in agreement with the view of the learned Additional Sessions Judge that evidence of Kalavati (PW 6) is not reliable.

10. The only other eye-witness, as per the prosecution case is Savitri (PW 10). Savitri is wife of Gopal. She testified that on 21.03.1996 at 9.30 p.m. her sister in law Kalavati (PW 6) had gone to answer the call of nature towards the municipal latrine. Within short time, she came back. At that time Gopal was taking meals.

Kalavati told Shankar that Ajay @ Rafiq teased her while she was going towards latrine. Immediately Shankar went out of the house and rushed to the house of the accused persons. Within short time, they heard commotion and shouting. Her husband Gopal then went out of the house. She and Kalavati followed her husband outside the house and they saw Savita (A2) holding Shankar from front side and her sons Raju @ Malang (A1), Sanjay @ Salim (A5) and Ajay @ Rafiq assaulting Shankar with weapons held by them. According to her, the accused persons were holding hockey stick, cricket bat and knife. Her husband Gopal rushed to save Shankar from assault. All the assailants ran away towards Kurla Terminus. Her cross-examination reveals that there are improvements in her deposition before the Court. She was confronted with her police statement as in that statement she had not stated that weapons viz., knife, hockey stick and cricket bat were with the accused persons. She admitted in the cross-examination that she was not in a position to state as to which weapon was held by each of the accused at the time of the incident. She was not able to identify the other two assailants Rajesh and Anand. Though she claims to have come out of the house along with Kalavati (PW 6) on hearing the shouts and commotion, PW 6 deposed that at the time of incident, she was inside the house. Having scanned her evidence, we find it difficult to believe that PW 10 witnessed the incident. The evidence of PW 10

is not sufficiently reliable to implicate the accused persons A1, A2 and A5 for the offence under section 302 read with section 34 IPC.

11. The direct evidence produced by the prosecution is, therefore, not sufficient to prove the guilt of the accused-appellants.

12. The prosecution relied upon the circumstance that the clothes worn by A1 and A2 had blood stains and the said blood stains matched the blood group of deceased. Let us see whether seizure of the clothes is proved by reliable evidence and the aforesaid circumstance helps the prosecution case? A1 was arrested as per the deposition of PW 13 on 22.03.1996 at about 3.30 hours at Vidyavihar Railway Station and from there he was brought to Tilak Nagar Police Station at about 4.05 hours. Arrest panchanama is Exhibit 41. The arrest panchanama records that the police seized the clothes from the person of the accused A1. The said clothes comprise of white shirt and chocolate colour trouser. The said clothes were sent for chemical analysis. The CA report (Ex. 51) reveals that though the blood on the said clothes was human, its grouping was inconclusive. As regards A2, it is the case of the prosecution that she was arrested at Kurla Railway Station and was brought to Tilak Nagar Police Station on 22.03.1996 at 5.15 hours.

Her arrest panchanama (Exh. 43) shows that she was wearing maxi (light blue colour) and black odhani. The said clothes were seized and sealed. These clothes were sent for chemical analysis and the CA report (Exh. 51 collectively) records that blood stains found on the maxi were human having group "O", while on odhani, though human blood stains were found, the grouping was inconclusive. The panchas of both the arrest memo (Exs. 41 and 43) were not examined by the prosecution. The explanation put forth by the prosecution was that they were not traceable. It is too much of a coincidence that none of the four panchas of Exs. 41 and 43 was traceable. The seizure of the clothes from the person of the accused A1 and A2 is not proved by the reliable independent evidence. This circumstance, therefore, does not advance the case of the prosecution.

13. As regards the recovery of sword based on the disclosure statement of A1, suffice it to say that none of the eye-witnesses has stated or suggested the use of sword by A1 or any other accused person. The article ‘sword’ was seen by us. It is 2 to 2.1/2 feet long. If the knife could be noticed by the witnesses, obviously sword would have been noticed had that been with A3 or any other accused person. The seizure of sword does not connect the accused persons particularly A1 with the crime. Besides that PW 2 did not support the prosecution

case about the recovery of sword at the instance of A1. The other panch has not been examined by the prosecution.

14. That A1 had the injuries on his person at the time of his arrest is seen from the arrest memo (Ex.41). The arrest memo records that there was wound on his right knee which was bandaged with white cloth. On the left arm, there was a scar of hard bite with teeth and there were abrasions on the right hand elbow. All the marks were of fresh assault. There is no explanation by the prosecution in this regard. Admittedly A1 was not medically examined and, therefore, the nature of injuries found on his person at the time of his arrest remains unknown. The spot panchanama (Ex. 37) shows that there was trail of blood - 100 meters towards southern side of the place of incident and about 200 meters towards the northern side from the place of incident. The trail of blood towards southern side of place of incident could have been victim's on his being brought to his house but there is no investigation nor explanation about the trail of blood towards northern side of the place of incident. After assaulting Shankar, the accused persons are said to have run away towards northern side of the place of incident. This is serious lacunae in the prosecution case.

15. All in all we find that the prosecution has not been

able to establish the offence under section 302 read with Section 34 IPC against the appellants (A1, A2 and A5) beyond reasonable doubt and, therefore, the conviction of the appellants cannot be sustained.

16. Both the appeals are, accordingly, allowed. The appellants Raju @ Malang Ramanna Kasareddy (A1), Savita @ Farida Begam Ramanna Kasareddy (A2) and Sanjay @ Salim Ramanna Kasareddy (A5) are acquitted of the offences under Section 302 read with Section 34 of the Indian Penal Code. The appellants Savita @ Farida and Sanjay @ Salim are on bail and their bail bonds are cancelled. The appellant Raju @ Malang is directed to be released forthwith, if not required in any other case.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)